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### Laws Passed by the 1976 South Dakota Legislature Concerning Estates

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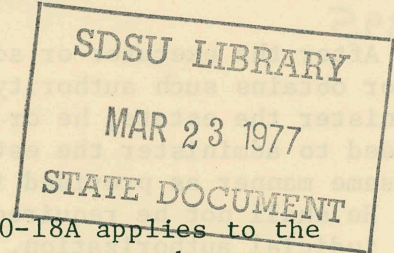
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# Laws Passed by the 1976 South Dakota Legislature Concerning Estates



## South Dakota Compiled Laws (SDCL) 29A

South Dakota Compiled Laws (SDCL) 29A repeals Chapter 196 of the 1974 Session Laws (Uniform Probate Code) and provides for the transition of actions started thereunder.

The Supreme Court was authorized to issue rules providing for the orderly transition of cases initiated in accordance with the procedures set forth under the Uniform Probate Code. Procedures in Title 29 and 30 are to be used.

SDCL 30-11-1 repealed Chapter 196 of the 1974 Session Laws. It also stated that "Summary Administration" is permitted when the decedent was a resident of South Dakota at the time of his death, or died there, or left real or personal property there of a total gross value not exceeding sixty thousand dollars.

## SDCL 30-18A Independent Administration of Estates Act

This act provides for the independent administration of estates by executors or administrators with limited court supervision in specified conditions.

SDCL 30-18A applies to the estate of any person that:

1. Dies on or after July 1, 1976; and
2. Dies before July 1, 1976 if no executor or administrator has been granted letters before such date. However, the court may decline to apply these provisions if it determines it's not in the best interests of the estate and those persons interested.

If a decedent's will does not provide that an estate shall not be administered under the provisions of the act, an executor or administrator who desires to administer the estate shall then petition the court for such authority either in the petition for his appointment or by separate petition. If authority is requested in the petition for appointment, notice of the hearing of the petition shall be given for the period and in the appropriate manner applicable to the petition for appointment. If authority is requested in a separate petition, the matter shall be set for hearing and notice given by mail to all heirs, devisees and legatees of the decedent and by posting in the customary place (at the courthouse), all at least ten days before the hearing date. The notice of the hearing must state that such authority is being requested. Any person interested in the estate may appear and object to the granting of such



authority by filing a written statement setting forth his objections. Unless the court determines that the objecting party has shown good cause why such authority should not be granted, the court will grant such authority. The provisions of this act do not apply to special administrators.

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After the executor or administrator obtains such authority to administer the estate, he or she shall proceed to administer the estate in the same manner as provided in Title 30. He shall not be required to obtain judicial authorization, approval, confirmation or instructions (otherwise known as "court supervision") for most or many actions during the course of the administration of the estate.

The executor or administrator, in the absence of written consent of all heirs, devisees and legatees, shall be required to obtain court supervision under Title 30 for any of the following actions:

1. Confirmation of sales of real property made otherwise than at public auction.
2. Continued payment of a family allowance for a period more than twelve months;
3. Partial and final distribution and discharge;
4. Determining third party claims to real and personal property held or possessed by the decedent, or determining the decedent's claim to real or personal property possession or title of which is held by another.

Prior to any actions taken without court supervision, the executor or administrator who has the authority to act without court supervision may advise affected persons of his intention to take such action. This advice, if given, shall be delivered or sent by first-class mail to each person entitled

to the notice. Any person entitled to the notice who objects to the proposed action may apply to the court having jurisdiction over the proceedings for an order restraining the executor or administrator from taking the action. The court shall grant the order without cause being shown. The validity of any action taken to convey or transfer title of property to any purchaser by the executor or administrator in violation of such restraining order shall not be affected.

Unless the will states otherwise, the executor or administrator, acting without court supervision, shall have the following powers plus others listed under Title 30.

1. To manage, control, convey, divide, exchange, partition and sell property for cash or credit;
2. To lease property for any purpose;
3. To invest and reinvest money of the estate in deposits in banks and savings and loan associations that mature no later than one year from the date of investment or reinvestment, and to invest and reinvest any surplus money he handles in any manner provided by the will;
4. To borrow and to place, replace, renew or extend any encumbrance upon any property in the estate;
5. To abandon worthless assets or their interest.
6. To make repairs or alterations in buildings or other property;
7. To vote a security in person or by proxy;
8. To sell or exercise stock subscription or conversion rights;
9. To hold a security in such name so as to not disclose the estate's interest, and thus facilitate passing of title by delivery;
10. To insure estate assets against damage or loss and also the



executor or administrator against liability with respect to third persons;

11. To settle any claim by or against the estate by compromise; to institute, compromise and defend legal actions and proceedings;
12. To pay taxes, assessments and other expenses incurred in the collection, care and administration of the estate;
13. To continue operation of the decedent's business as he deems in the best interests of the estate and interested parties;
14. To pay a reasonable family allowance for a period of up to twelve months.
15. To complete a contract entered into by the decedent to convey real or personal property.

Any interested person objecting to the administration of the estate under SDCL 30-18A may file a petition giving the basis for the revocation of the executor's or administrator's authority. A hearing shall be held and if the court should determine that good cause has been shown, it shall revoke the authority of the executor or administrator to continue. New letters testamentary or letters of administration shall then be issued.

## **SDCL 30-16**

SDCL 30-16 relates to the procedure for executors and administrators for inventory of the assets of the estates.

Every executor or administrator must make and return to the courts within ninety days after his appointment an inventory of all the estate except the homestead which he has possession of or knowledge about. The inventory must include owned property, its market value as of date of death, and any encumbrances.

Placing a value on each item in the inventory is the responsibility

of the executor or administrator. However, the executor or administrator may employ a qualified and disinterested appraiser to assist him in determining the fair market value of any asset, the value of which may reasonably be doubted. The appraiser must take an oath that he will truly, honestly and impartially appraise the property to the best of his knowledge and ability.

Any property not included in the original inventory or if the value of property in the original inventory for any item is erroneous or misleading, the executor or administrator shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death and file it with the court.

The executor or administrator must sign the inventory and take an oath that the inventory contains a true statement of all property of the estate which came to his knowledge or possession for all money belonging to the decedent and of all just claims of the decedent against him.

## **SDCL 29 - 2**

SDCL 29-2 relates to the making of a self-proved will. A new section was added to SDCL 29-2 as follows:

A witnessed will, at the time it is made or at any later date, may be made self-proved, by the acknowledgment of the testator and by affidavits of the witnesses. This must be done before an officer authorized to administer oaths under the laws of the state. The officer must attach his certificate under official seal to the will. A form is provided in the law for this procedure.



## SDCL 30-22-8

SDCL 30-22-8 relates to the sale procedure and appraisal of estate assets. SDCL 30-22-8 was amended to read as follows:

The executor or administrator shall present a verified petition to the circuit court in order to obtain an order for the sale of personal property (property other than that described and provided for in SDCL 30-22-44 and 30-22-45 and real property). This section lists the contents of the petition.

## SDCL 55-5A-1

SDCL 55-5A-1 authorizes foreign trustees to release, discharge or assign mortgages and judgments belonging to an estate, trust or person under guardianship and to execute deeds to convey real estate in performance of contracts for the sale thereof which were entered into before the creation of the estate, trust or guardianship. The act sets forth the procedure to be followed.